

Small Business Administration

§ 134.318

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of § 134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

[67 FR 47250, July 18, 2002]

§ 134.314 Standard of review and burden of proof.

The standard of review is whether the size determination or NAICS code designation was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code appeals.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002; 69 FR 29209, May 21, 2004]

§ 134.315 The record.

Where relevant, the provisions of § 134.225 apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

[61 FR 2683, Jan. 29, 1996, as amended at 75 FR 47442, Aug. 6, 2010]

§ 134.316 The decision.

(a) The Judge shall issue a size appeal decision, insofar as practicable, within 60 calendar days after close of the record.

(b) The Judge shall issue a NAICS code appeal decision as soon as practicable after close of the record.

(c) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered. The Judge will not decide substantive issues raised for the first time on appeal, or which have been abandoned or become moot.

(d) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance. Where a size appeal

is dismissed, the Area Office size determination remains in effect.

(e) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

(f) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002; 69 FR 29209, May 21, 2004; 76 FR 5685, Feb. 2, 2011]

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

[67 FR 47250, July 18, 2002]

§ 134.318 NAICS appeals.

(a) The regulations at §§ 121.402, 121.1102, and 121.1103 of this chapter also apply to NAICS code appeals.

(b) *Effect of OHA's decision.* If OHA grants the appeal (changes the NAICS code), and the contracting officer receives OHA's decision by the date offers are due, the contracting officer must amend the solicitation to reflect the new NAICS code. If the contracting officer receives OHA's decision after the date offers are due, OHA's decision will not apply to the pending procurement, but will apply to future solicitations for the same supplies or services.

(c) *Summary dismissal.* OHA may summarily dismiss a NAICS appeal either on the Judge's own initiative or on motion by a party. A summary dismissal may be with or without prejudice, and may be issued before the date set for close of record. Grounds for summary dismissal include: premature appeal, withdrawn appeal, settlement, cancellation of the procurement, and contract award.

[75 FR 47442, Aug. 6, 2010]

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

SOURCE: 63 FR 35766, June 30, 1998, unless otherwise noted.